

PUBLIC COPY

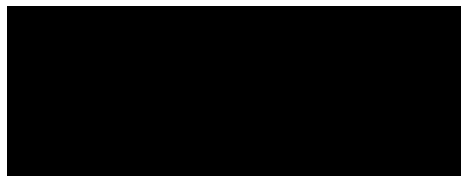
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

D4

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

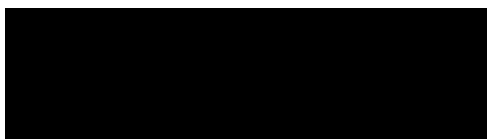


U.S. Citizenship
and Immigration
Services



FILE: LIN 03 135 50295 Office: NEBRASKA SERVICE CENTER Date: APR 05 2004

IN RE: Petitioner:
Beneficiary:

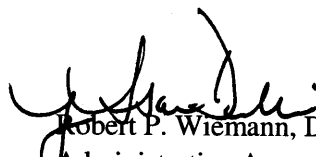


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private citizen, who desires to employ the beneficiary as a domestic and childcare specialist for two years. The director determined that the petitioner had not submitted a temporary labor certification from the Department of Labor (DOL) or notice stating that such certification could not be made.

On appeal, the petitioner states that Citizenship and Immigration Services (CIS) requested the original ETA 750, where in fact a new ETA 750 was required.

An H-2B petition for temporary employment in the United States shall be accompanied by a labor certification determination that is either: (1) a certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or (2) a notice detailing the reasons why such certification cannot be made. 8 C.F.R. § 214.2(h)(6)(iv)(A).

The petition was filed on April 3, 2003 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. The regulation requires that, prior to filing a petition with the director to classify an alien as an H-2B worker, the petitioner must apply for a temporary labor certificate with the Secretary of Labor for all areas in the United States, except the Territory of Guam. 8 C.F.R. § 214.2(h)(6)(iii)(A). In this case, the petitioner did not apply for a temporary labor certification prior to the filing of the petition. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

On appeal, the petitioner states that in a letter, dated May 21, 2003, CIS requested a copy of the original ETA 750. The petitioner goes on to state that if an entirely new ETA 750 certification process was required, the instructions were unclear. This misunderstanding is unfortunate; however, the instructions on the petition itself state clearly that a temporary labor certification must be submitted along with the petition.

This petition cannot be approved for an additional reason. As a general rule, the period of the petitioner's need must be a year or less, although there may be extraordinary circumstances where the temporary services or labor might last longer than one year. The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. 8 C.F.R. § 214.2(h)(6)(ii)(B). In a letter, dated July 7, 2003, the petitioner indicates that the employment is a one-time occurrence.

To establish that the nature of the need is a "one-time occurrence," the petitioner must demonstrate that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary worker. 8 C.F.R. § 214.2(h)(6)(ii)(B)(1).

The nontechnical description of the job on the Application for Alien Employment Certification (Form ETA 750) reads:

Childcare: Feeding, bathing, clothing, supervising, transporting to and from pre-school (07:00-08:30; 17:00-18:00)

Domestic: Cleaning, making beds, shopping, cooking, laundry, ironing

Compensation will include full room and board, and social provisions

Upon review, the evidence submitted does not establish that the petitioner's need for the services to be performed can be classified as a one-time occurrence. The duties are ongoing and cannot be classified as duties that will not need to be performed in the future. Further, the petition indicates that the petitioner needs the beneficiary's services for two years. This time period does not demonstrate the petitioner having a temporary event of short duration. Consequently, the petitioner has not established that the need for the services to be performed is a one-time occurrence and temporary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.